

IN THE SENATE

SENATE BILL NO. 1250

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO PROTECTED PERSONS; AMENDING CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-108, IDAHO CODE, TO PROVIDE THAT CERTAIN ORDERS AND APPOINTMENTS HAVE NO EFFECT ON TESTAMENTARY CAPACITY, TO SPECIFY CERTAIN FACTORS INDICATIVE OF TESTAMENTARY CAPACITY AND TO CLARIFY THAT SPECIFIED PROVISIONS SHALL NOT ALTER OR MODIFY ANY CLAIM, CHALLENGE OR DEFENSE REGARDING THE VALIDITY OR EFFECTIVENESS OF THE EXERCISE OF TESTAMENTARY CAPACITY; AMENDING SECTION 15-5-408, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO THE LACK OF EFFECT OF CERTAIN ORDERS ON THE CAPACITY OF PROTECTED PERSONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 15-5-427, IDAHO CODE, TO REMOVE UNNECESSARY VERBIAGE, TO PROVIDE FOR CONSIDERATION OF GENERAL POWERS OF APPOINTMENT, TO PROVIDE FOR CERTAIN LIMITATIONS OF LIABILITY AND RESPONSIBILITY FOR CONSERVATORS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 32-106, IDAHO CODE, TO REMOVE ARCHAIC VERBIAGE AND TO SPECIFY THAT CERTAIN PERSONS HAVE NO POWER TO MAKE CONTRACTS; AMENDING SECTION 32-107, IDAHO CODE, TO REVISE VERBIAGE AND TO SPECIFY THAT CONTRACTS OF CERTAIN PERSONS ARE SUBJECT TO RESCISSION; AND AMENDING SECTION 32-108, IDAHO CODE, TO REMOVE ARCHAIC VERBIAGE, TO PROVIDE FOR AN EXCEPTION RELATING TO TESTAMENTARY CAPACITY FOR CERTAIN PERSONS PROHIBITED FROM MAKING CONVEYANCES AND CONTRACTS AND TO REMOVE PROVISIONS RELATING TO CERTAIN MEDICAL CERTIFICATIONS ESTABLISHING A PRESUMPTION OF LEGAL CAPACITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 5, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-5-108, Idaho Code, and to read as follows:

15-5-108. TESTAMENTARY CAPACITY. An order made pursuant to title 15, Idaho Code, determining that a basis for appointment of a conservator, guardian or other protective order exists, has no effect on the testamentary capacity of the protected person. The appointment of a temporary guardian, temporary conservator or other temporary order has no effect on testamentary capacity of the protected person. Testamentary capacity includes, but is not limited to, the capacity to do the following:

(1) Execute or modify a will, codicil, revocable trust or other document or instrument that distributes or transfers assets of the protected person upon death;

(2) Identify or modify a beneficiary on a life insurance contract, annuity or retirement plan that exists on the date of appointment;

(3) Identify or modify a P.O.D. or T.O.D. account as set forth in chapter 6, title 15, Idaho Code;

1 (4) Establish or modify any nontestamentary transfer set forth in sec-
 2 tion 15-6-104, Idaho Code.
 3 Nothing in this section shall alter or modify any claim, challenge or defense
 4 regarding the validity or effectiveness of the exercise of testamentary ca-
 5 pacity by the protected person.

6 SECTION 2. That Section 15-5-408, Idaho Code, be, and the same is hereby
 7 amended to read as follows:

8 15-5-408. PERMISSIBLE COURT ORDERS. (a) The court shall exercise the
 9 authority conferred in the part so as to encourage the development of maximum
 10 self-reliance and independence of the protected person and make protective
 11 orders only to the extent necessitated by the protected person's actual men-
 12 tal and adaptive limitations and other conditions warranting the procedure.

13 (b) The court has the following powers which may be exercised directly
 14 or through a conservator in respect to the estate and affairs of protected
 15 persons:

16 (1) While a petition for appointment of a conservator or other protec-
 17 tive order is pending and after preliminary hearing and without notice
 18 to others, the court has power to preserve and apply the property of the
 19 person to be protected as may be required for his benefit or the benefit
 20 of his dependents.

21 (2) After hearing and upon determining that a basis for an appointment
 22 or other protective order exists with respect to a minor without other
 23 disability, the court has all those powers over the estate and affairs
 24 of the minor which are or might be necessary for the best interests of
 25 the minor, his family and members of his household.

26 (3) After hearing and upon determining that a basis for an appointment
 27 or other protective order exists with respect to a person for reasons
 28 other than minority, the court has, for the benefit of the person and
 29 members of his household, all the powers over his estate and affairs
 30 which he could exercise if present and not under disability, except
 31 the power to make a will. These powers include, but are not limited to
 32 power to make gifts, to convey or release his contingent and expectant
 33 interests in property including marital property rights and any right
 34 of survivorship incident to joint tenancy or tenancy by the entirety,
 35 to exercise or release his powers as trustee, personal representative,
 36 custodian for minors, conservator, or donee of a power of appointment,
 37 to enter into contracts, to create revocable or irrevocable trusts of
 38 property of the estate which may extend beyond his disability or life,
 39 to exercise options of the disabled person to purchase securities or
 40 other property, to exercise his right to elect options and change ben-
 41 eficiaries under insurance and annuity policies and to surrender the
 42 policies for their cash value, to exercise his right to an elective
 43 share in the estate of his deceased spouse and to renounce any interest
 44 by testate or intestate succession or by inter vivos transfer.

45 (4) The court may exercise or direct the exercise of, its authority to
 46 exercise or release powers of appointment of which the protected person
 47 is donee, to renounce interests, to make gifts in trust or otherwise ex-
 48 ceeding twenty ~~per cent~~ percent (20%) of any year's income of the estate
 49 or to change beneficiaries under insurance and annuity policies, only

1 if satisfied, after notice and hearing, that it is in the best interests
 2 of the protected person, and that he either is incapable of consenting
 3 or has consented to the proposed exercise of power.

4 ~~(5) An order made pursuant to this section determining that a basis for~~
 5 ~~appointment of a conservator or other protective order exists, has no~~
 6 ~~effect on the capacity of the protected person.~~

7 SECTION 3. That Section 15-5-427, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 15-5-427. PRESERVATION OF ESTATE PLAN. In investing the estate, and in
 10 selecting assets of the estate for distribution under subsections (a) and
 11 (b) of section 15-5-425 of this Part, in utilizing powers of revocation or
 12 withdrawal available for the support of the protected person, and exercis-
 13 able by the conservator or the court, the conservator and the court should
 14 take into account and preserve insofar as possible any known estate plan of
 15 the protected person, including his will, any revocable trust of which he is
 16 settlor, and any contract, transfer or joint ownership arrangement with pro-
 17 visions for payment or transfer of benefits or interests at his death to an-
 18 other or others which he may have originated and except as authorized in sec-
 19 tion 15-1-108, Idaho Code. The conservator may examine the will of the pro-
 20 tected person. The conservator shall have no liability for or responsibil-
 21 ity to monitor any exercise by the protected person of testamentary capacity
 22 as authorized in section 15-5-108, Idaho Code.

23 SECTION 4. That Section 32-106, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 32-106. CONTRACTS OF PERSONS WITHOUT UNDERSTANDING. A person ~~entirely~~
 26 ~~without understanding~~ for whom a guardian or conservator has been appointed
 27 pursuant to title 15, Idaho Code, has no power to make a contract of any kind,
 28 but he is liable for the reasonable value of things furnished to him neces-
 29 sary for his support or the support of his family.

30 SECTION 5. That Section 32-107, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 32-107. CONTRACTS OF ~~INSANE~~ INCAPACITATED PERSONS. A conveyance or
 33 other contract of a person ~~of unsound mind, but not entirely without under-~~
 34 ~~standing~~ for whom a permanent guardian or conservator has been appointed
 35 pursuant to title 15, Idaho Code, made before his incapacity has been judi-
 36 cially determined, is subject to rescission.

37 SECTION 6. That Section 32-108, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 32-108. CONTRACTS OF ~~INSANE~~ PERSONS AFTER ADJUDICATION OF INCAPAC-
 40 ITY. After his incapacity has been judicially determined, a person of
 41 unsound mind can make no conveyance or other contract, nor delegate any power
 42 or waive any right until his restoration to capacity. ~~But a certificate~~
 43 ~~from the medical superintendent or resident physician of the insane asylum~~

1 ~~to which such person may have been committed, showing that such person had~~
2 ~~been discharged therefrom cured and restored to reason, shall establish the~~
3 ~~presumption of legal capacity in such person from the time of such discharge,~~
4 ~~subject to the exercise of testamentary capacity as set forth in section~~
5 ~~15-5-108, Idaho Code.~~